IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 27609 of 2006(J)

PETITIONER:

P.E. HUSSAIN, S/O. ISMAIL,
AGED 46 YEARS, PUTHIYEDATHUKUNNEL HOUSE,
ELAMDESAM P.O., IRUKKUPALAM, THODUPUZHA.

BY ADV. SRI.ALEXANDER JOSEPH
SRI.M.V.SABU

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF LOCAL SELF GOVERNMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. DISTRICT COLLECTOR,
IDUKKI DISTRICT, PAINAVU, IDUKKI.

3. THE VELLIYAMATTOM GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, VELLIYAMATTOM,
THODUPUZHA.

4. KASSIM, S/O. HUSSAIN,
AGED 40 YEARS, CHOORATHOTTIYIL HOUSE,
PANNIMATTOM P.O., PANNIMATTOM, THODUPUZHA.

5. E.K. HANIFA, AGED 48 YEARS,
ELAVUMTHADATHIL HOUSE, MADAKKATHANAM P.O.,
MADAKKATHANAM VIA., MUVATTUPUZHA.

6. P.K. ROY, S/O. KORA,
AGED 38 YEARS, PALATHOTTIYIL HOUSE,
KOOVAKKADAM P.O., POOMALA, THODUPUZHA.

R1 & R2 BY ADV. SMT. T.B. RAMANI, GOVT. PLEADER.
R3 BY ADV. SRI.RAJAN JOSEPH
SRI.KOSHY GEORGE
R5 BY ADV. SRI.P.I.DAVIS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 27609 OF 2006

Dated this the 13th day of March, 2007

JUDGMENT

The grievance of the petitioner who is a resident of the 3rd respondent-Velliyamattom Grama Panchayat is that as per Ext.P2 auction notice issued by the Panchayat, right of collecting river sand from the three authorized kadavus within the area of the 3rd respondent, has been given to respondents 4,5 and 6. The petitioner alleges that respondents 4, 5 and 6 are binamees of the President and Vice President of the Panchayat. The auction according to the petitioner has not been conducted in terms of the Kerala Protection of River Bank and Regulation of Removal of Sand Act 2001 and the Kerala Protection of River Bank and Regulation of Sand Rules 2002. The District Collector has not constituted Kadavu Committee in this Panchayat as envisaged by Section 4(2) of the Act. It was not under the supervision or by monitoring of the Kadavu Committees that the auction has been conducted. Instead, auction has been conducted by the Panchayat on its own and it has now been confirmed in favour of respondents 4,5 and 6. On these allegations the petitioner raise various grounds and prays for the following reliefs:

i. issue a writ of certiorari or any other appropriate writ, order

or direction quashing all proceedings leading to and pursuant to Ext.P2 auction sale;

ii. issue a writ of mandamus or any other writ, order or direction directing the respondents to stop the quarrying and sale of sand pursuant to Ext.P2 auction sale;

iii. issue appropriate writ, order or direction declaring that the respondents 1,2 and 3 have no authority to allow respondents 4, 5 & 6 or anybody else to conduct quarrying of sand from Vadakkanar(Velliyamattom Thodu) under the 3rd respondent;

iv. issue appropriate writ, order or direction declaring that Ext.P2 auction sale, auctioning the Kadavu to the highest bidder and allowing the respondents 4,5 & 6 to trade river sand is illegal.

2. A statement has been submitted on behalf of the 3rd respondent. Along with that statement, Ext.R3(a), copy of the letter dt.6.6.06 issued by the Tahsildar, Thodupuzha has been produced.

3. On considering the Writ Petition for admission, I ordered urgent noticed on admission by special messenger to respondents 3 to 6. The Government Pleader took notice on behalf of respondents 1 and 2. He was directed to seek instructions from the 2nd respondent-District Collector. After hearing parties on 26.10.06, I passed an order directing the 2nd respondent-District Collector to ensure by doing the needful that respondents 4, 5 and 6 do not extract and remove more sand from the Kadavus in question in excess of what is allowed to them under Ext.P2-

auction notice. Thereafter on 16.11.06, after hearing counsel for parties and the learned Government Pleader who submitted on the basis of the instructions dt.31.10.06 received by him from the District Collector that the period as allowed as per Ext.P2 is only upto 10.11.06 noticing that party respondents have not entered appearance in spite of they being service with notice by special messenger, I passed an interim order directing the respondents to stop quarrying and selling of sand as per Ext.P2 till 20.11.06 and continued that interim order for one more week by subsequent order dt.20.11.06. On 22.11.06 I directed the Government Pleader to seek instructions from the District Collector regarding the documents produced along with the clarification petition, IA No.16296 of 2006 which had been filed by the 3rd respondent in the meanwhile. Along with the above mentioned clarification petitioner, the 3rd respondent produced Ext.R5(a) which is copy of a letter from the Secretary of the Panchayat to the District Collector clarifying the position regarding which the District Collector sought for clarification from the Panchayat Secretary and seeking the permission of the District Collector to allow quarrying of sand till 20.11.06. Ext.R5(b) is copy of the order dt.02.11.06 issued by the Sub Divisional Magistrate, Idukki and Ext.R5 (c) is copy of the letter issued to the Tahsildar, Thodupuzha. Clarification Petition states that Ext.R5(a) submitted by the 3rd respondent clarified that the date 10.11.06 mentioned in Ext.P2 auction notice being clerical error, the Panchayat should be allowed to take

sand till 20.11.06. This was why Ext.R5(a) order was passed. Learned Government Pleader in fact placed before me the photocopies of the papers relating the file maintained by the District Collector in the matter. I heard the counsel appearing for the parties and on hearing them I was not only inclined to extend the interim order.

4. Then the position is that the interim order restraining the collection of sand has not been extended since 27.11.06. The period mentioned in Ext.P2 auction notice is obviously over. Ext.P3 was a representation which the petitioners had submitted to the District Collector. Ext.P3 enlist nine grounds on which the petitioners allege that the auction sale, Ext.P2 is illegal. As for grounds 1 to 8, I am of the view that those grounds cannot be considered in view of the obvious position that the period is over and respondents 4, 5 and 6 will no longer be allowed to extract sand on the strength of the auction which is impugned in the Writ Petition. The 9th point in Ext.P3 appears to be a point which may survive. If the petitioner feels that the District Collector should take a decision on Ext.P3 at least in the context of the 9th reason stated in Ext.P3,it is for the petitioner to alert the District Collector by filing appropriate reminder representation.

If the District Collector receives a reminder representation in continuation of Ext.P3 within three weeks of the petitioner receiving a copy of this judgment, the District Collector will hear the petitioner on the same as well as the Secretary of the Panchayat and anybody else, who

according to the District Collector will be concerned in the matter and take a proper decision. The decision as directed above will be taken by the District Collector within three months of receiving copy of this judgment. The Writ Petition is disposed of accordingly.

PIUS C. KURIAKOSE, JUDGE

btt